THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NOs.23191 and 23192 of 2006

DATED 23.11.2006

WP No. 23191/2006

Between:

A.Yuva Raj and another. .. PETITIONERS

versus

The Municipal Corporation of Hyderabad,
represented by its Commissioner
and another. .. RESPONDENTS

WP No. 23192/2006

Between:

A.Satyanarayana and another. .. PETITIONERS

versus

The Municipal Corporation of Hyderabad,
represented by its Commissioner
and another. .. RESPONDENTS

WRIT PETITION NOs.23191 and 23192 of 2006

COMMON ORDER:

The respondents in both these Writ Petitions are Municipal Corporation of Hyderabad and the Assistant City Planner, Town Planning Section, Municipal Corporation of Hyderabad, Circle V, Khairtabad, Hyderabad. Since the facts are almost similar, both these Writ Petitions are being disposed of by a common Order.

2. The petitioners in Writ Petition No.23191 of 2006 prayed for a Writ of Mandamus declaring the letter No.231/A/44/45, 28/29/3/8/2006,

dated 3.11.2006 issued by the respondents as illegal, contrary to law and arbitrary and consequently direct the respondents to grant building permission in favour of the petitioners in respect of the house property bearing No.8-3-231/A/44, 45, 28/29, Sri Krishna Nagar, Yousufguda, Hyderabad, in pursuance of the building application of the petitioners dated 24.10.2006 and pass such other suitable orders.

3. It is stated in Writ Petition No.23191 of 2006 that the 2nd petitioner is the wife of the first petitioner and they have been in occupation of 279 square meters in S.Nos.121, 122, 123, 125 (New) T.S.No.4/P, Ward No.10, Block-A corresponding to premises No.8-3-231/A/28&29, Sri Krishna Nagar, Shaikpet village and Mandal, Hyderabad right from 1977 onwards. Originally the entire Sri Krishna Nagar Colony was the excess land vested with the Government under Urban Land (Ceiling and Regulations) act, 1976. Many of the individuals occupied the said excess land in 1977-78 and had constructed their respective houses. All the occupants of the colony including the petitioners have obtained electricity connection, water connection and they are paying property tax to the respondent-Corporation. Thereafter, the petitioners had also occupied an extent of 279 square meters and constructed a house in 1977 itself. It is stated that one Venkata Narasimha Charyulu and his wife Smt.K.Padmavathi also occupied 138.77 square meters and constructed a house bearing No.8-3-231/A/45, Sri Krishna Nagar and were living therein from 1978 onwards. The first petitioner purchased the property bearing No.8-3-231/A/45 admeasuring 138.77 square meters equivalent to 166.66 square yards from the said Venkata Narasimha Charyulu and his wife K.Padmavathi under a registered sale deed dated 8.10.1998. Since then the petitioners are in peaceful possession of the said house property. It is stated that one G.B.Narasimha Singh was also occupied an extent of 142.80 square meters equivalent to 170.81 square yards

in 1977-78, constructed a house and living therein and the said Narasimha Singh obtained electricity and water connections and also paying property tax regularly. Thereafter, the first petitioner purchased the said property to an extent of 142.80 square meters from G.B.Narasimha Singh for a valuable consideration under a registered sale deed on 20.3.2003. Thus, the first petitioner is the absolute owner and possessor of an extent of 281.57 square meters equivalent to 336.81 square yards covered by house Nos.8-3-231/44/A and 8-3-231/A/45, Sri Krishna Nagar, Hyderabad. It is also stated that since the entire land of Sri Krishna Nagar was declared as excess land under ULC (C&R) Act, 1976 and in occupation of many of the individuals, who constructed their respective houses and living therein, the respondent-Corporation had not only assessed all the houses to property tax, but also provided all basic amenities. The respondent-Corporation also provided roads, streetlights and maintaining the same. At present, Sri Krishna Nagar is a well developed colony. Basing on the representation of the individual occupants including the petitioners, the Government have considered the cases of individual occupants to regularize their respective lands in their occupation on collection of the prescribed value of the land. It is also further stated that on the proposals submitted by the Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad, for allotment of the land under Section 23(4) of the Urban Land (C&R) Act, 1976 of the excess lands acquired by the Government, which are under occupation of individual occupants, the Government allotted the respective lands to the individual occupants on collection of the amounts prescribed in GO Ms.No.455, Revenue (VCI) Department, dated 29.7.2002. Accordingly the 1st petitioner was allotted the land to an extent of 138.71 square meters (as per survey, 146 square meters) in S.Nos.121, 122, 123, 125 (New) T.S.No.4/P, ward No.10, Block-A covered by H.No.8-3-

231/A/45, Sri Krishna Nagar, Hyderabad, by the Government along with other 27 allottees vide G.O.Ms.No.1145, dated 15.11.2003 directing the Special Officer and Competent Authority, ULC Hyderabad to verify the genuineness of the case and original records of the Department and report the result to Government. The Special Officer and Competent Authority in turn after verification of all records, attested the allotment by his proceedings dated 4.12.2003 and concerned authorities were informed to take necessary entries of the allotment in their records. Likewise the 2nd petitioner was allotted the land by Government vide GO Ms.No.1144, dated 27.12.2002 to an extent of 279 square meters covered by premises No.8-3-231/A/28&29, Sri Krishna Nagar and Special Officer and Competent Authority, ULC attested the said allotment by his proceedings/endorsement dated 21.1.2003. Likewise, G.B.Narasimha Singh was allotted 142.80 square meters covered by premises No.8-3-231/A/44, Sri Krishna Nagar, Hyderabad vide GO Ms.No.949, dated 19.11.2002 and the Special Officer and Competent Authority attested the allotment vide proceedings/endorsement dated 28.11.2002. Thereafter, the first petitioner purchased an extent of 142.80 square meters from the said Narasimha Singh under a registered sale deed dated 20.3.2003 and thus he became owner and possessor of the total extent of 279 square meters covered by H.No.8-3-231/A/44 and 8-3-231/A/45. The 2nd petitioner is the owner of an extent of 270 square meters covered by H.No.8-3-231/S/28&29, Sri Krishna Nagar, Hyderabad. It is also further stated that the petitioners as absolute owners and legal possessors of the house properties bearing Nos.8-3-231/A/44 and 8-3-231/A/45 and house property bearing No.8-3-231/A/28&29 admeasuring 560.57 square meters covered by houses, applied for regularization of the buildings over the said house property and the 1st respondent released permission regularizing the unauthorized

construction as per G.O.Ms.No.243, M.A., dated 22.5.1996 and released the permissions on 24.4.1997 to the extent of area admeasuring 183.38 square meters and 111.85 square meters under two plans. It is further stated that after the Government regularizing over the occupation of the said house property, passed regularization orders, the petitioners became the absolute owners and possessors of the house properties. The houses of the petitioners were already regularized under G.O.Ms.No.243, dated 22.5.1996 by approving the plans on 24.4.1997. It is stated that the entire Sri Krishna Nagar is a well developed area with all amenities for the last 25 years. The respondent-Corporation is collecting house tax property also. It is also stated that the 1st respondent issued proceedings No.1013/TPS/40/ACP-V/MCH/97.1448, dated 27.6.1997 giving certain instructions to regularize the unauthorized constructions of the entire Sri Krishna Nagar and directed the 2nd respondent to regularize the unauthorized constructions of Sri Krishna Nagar by duly collecting the *ad hoc* rates of betterment charges at Rs.26/- per square yard and BC at Rs.7.80 ps per square yard and compound fees of Rs.1,000/- per individual. The 2nd respondent was also directed to open a camp office in this regard in Sri Krishna Nagar Colony. It is further stated that the petitioners intended to apply for building permission by dismantling the existing buildings over the said house property and accordingly they applied for building permission over the said house property for ground plus two upper floors, on 24.10.2006 along with all the required documents to satisfy their title and legal possession apart from the technical requirements, but surprisingly the 2nd respondent rejected their building proposals by letter No.231/A/44/45, 28/29/3/8/2006, dated 3.11.2006 on two grounds informing that (1) the proposals submitted by them are not covered by any approved lay out or sub-division of MCH and (2) to submit No Objection Certificate from the

Joint Collector, Hyderabad. The rejection letter dated 03-11-2006 issued by the 2nd respondent is totally illegal and not based on valid grounds. As already stated the entire area of Sri Krishna Nagar is a well developed area, it does not require any approval of layout. Though at the cost of repetition it is stated that the entire area itself was unauthorized colony existing right from 1977-78, subsequently, on considering all these aspects, the said unauthorized constructions as well as the land were also regularized and allotted to individual occupants. Therefore the question of submission of copy of layout or sub-division to this area does not arise. The 1st respondent itself instructed the 2nd respondent as early as in 1997 vide proceedings dated 27-06-1997 to regularize unauthorized constructions by collecting individual betterment charges etc. Since the unauthorized constructions of individual parties were regularized, the entire area was well developed by providing all amenities like roads and drainage etc. It is also further stated that the purpose of insisting approval of layout and sub-division of a vast land is to provide access from the small plotted lands to the main roads, such roads were developed by duly black topping them for the benefit and convenience of the residents. In the present case the entire area is already developed and is being maintained by 1st respondent and at this stage insisting of approval of layout/ sub division for approval of building permission does not arise and the same is irrational and unsustainable. It is also stated that the Standing Committee of MCH in its meeting dated 23.06.2001 passed resolution No.20 permitting to collect 5% open space contribution charges as per registration value only on grant of building permission in unauthorized layouts, unauthorized sub divisions and unauthorized colonies developed in private lands without layout approval. Therefore in the light of the instructions of the 1st respondent, it is crystal clear that this objection for rejecting the

building application is totally untenable, unsustainable and non-application of mind. It is also further stated that so far as the second objection of rejection of the building proposals that the petitioners must submit the No Objection Certificate from the Joint Collector, Hyderabad, is concerned, the same is totally untenable and baseless. Several other factual details also had been narrated in the affidavit filed in support of the Writ Petition.

4. Likewise, in the Writ Petition No.23192 of 2006, the petitioners pleaded that the first petitioner is the absolute owner and possessor of the land and house admeasuring 279 Square Meters in Pr.No.8-3-231/A/30/1 to 4, Sy.No.12, 122, 123, 125, T.S.No.4/P, Ward No.10, Block-A, Sri Krishna Nagar, Yousufguda, Hyderabad and the 2nd petitioner, who is the wife of the first petitioner, is also absolute owner and possessor of the house property in an extent of land in 279 square meters in T.S.No.4/Part, Block A, Ward 10 situated in Premises No.8-3-231/A/31/3, Sri Krishna Nagar, Yousufguda, Hyderabad. The total extent of the land of both the petitioners together is 558.00 square meters. It is also stated that the petitioners are in occupation of the said house property right from 1977. Originally the entire Sri Krishna Nagar area was the excess land vested with the Government under Urban Land (Ceiling & Regulations) Act, 1976. Many of the individuals have occupied this excess land around 1977-1979 and have constructed their respective houses. The petitioners have also occupied the said house property and constructed houses therein and were living in their respective houses. It is further stated that since the entire land of Sri Krishna Nagar was excess land, the same was declared and surrendered under Urban Land (Ceilings & Regulation) Act, 1976 and many individuals were in occupation of the same by constructing houses and living therein. The 1st respondent corporation had not only assessed all the houses for the property tax,

but also provided all basic amenities. The 1st respondent provided roads, streetlights etc., and maintaining them. At present Sri Krishna Nagar is a well developed colony. Basing on the representation of the individual occupants including the petitioners, the Government have considered their cases to regularize their individual respective lands on collection of the value of the land. It is further stated that the proposals submitted by the Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad for allotment of land under Section 23 (4) of the Urban Land (Ceiling & Regulations) Act 1976 of the excess lands acquired by the Government which are under the occupation of individual occupants, the Government allotted respective lands to the individual occupants on collection of the amounts prescribed in G.O.Ms.No.455 Revenue (VC1) dated 29-07-2002. They were also allotted 279 square meters each out of the said house property vide G.O.Ms.No.1286 dated 30-06-2005 and G.O.Ms.No.1867 dated 05-11-2005 along with other individual occupants. The Special Officer and Competent Authority, ULC, Hyderabad was also directed by the Government in the said GO to verify the genuineness of the cases of the allottees and the original records of the department and report the result to Government. In turn the Special Officer and Competent Authority, after verification of all records, attested the allotment made by the Government in favour of the petitioners by his proceedings dated 13-07-2005 and dated 25-11-2005 respectively. Thus the petitioners have become absolute owners on regularization of their occupation of the said house properties. It is also stated that the petitioners being the absolute owners and legal possessors of the said house property, applied for regularization of the houses, and constructed houses in the year 1978. In pursuance of the G.O.Ms.No.243 MA dated 22-05-1996, the 1st respondent regularized the houses of the petitioners which were constructed unauthorizedly in

the year 1978. Accordingly permissions were released on 24-04-1997 vide two plans respectively. Thus the unauthorized buildings of the petitioners were regularized way back in 1997 itself. Thereafter keeping all the facts and circumstances into consideration, the Government also regularized the lands which are in the occupation of the petitioners on collection of the prescribed value of the land. It is also further stated that after the orders passed by the Government regularizing the occupation of the said house property, the petitioners became the absolute owners and possessors of the house properties. Their houses were already regularized under G.O.MS.No.243 dated 22-05-1996 by approving the plans on 24-04-1997. It is further stated most of the individual occupants were released their permissions under the regularization scheme as per G.O.Ms.No.243 dated 22-05-1996. The entire Sri Krishna Nagar is a well developed area with all amenities for the last 25 years. The respondent Corporation is collecting house tax properties also. It is not out of place to mention that the 1st respondent issued proceedings vide No.1013/TPS/40/ACP-V/MCH/97.1448 dated 27-06-1997 giving certain instructions to regularize the unauthorized constructions of the entire Sri Krishna Nagar and directed the 2nd respondent to regularize the unauthorized constructions of Sri Krishna Nagar by duly collecting the *ad hoc* rates of betterment charges at Rs.26/- per square yard and BC at Rs.7.80 per square yard and compounding fees of Rs.1,000/- (Rupees One Thousand only) per individual. The 2nd respondent was also directed to open a camp office in this regard in Sri Krishna Nagar Colony. It is also further stated in para 9 of the affidavit of the petitioners that the petitioners had a plan to apply for building permission by dismantling the existing buildings and accordingly on 24-10-2006, along with all the required documents regarding their title and legal possession, they applied for

building permission for ground plus two upper floors. Surprisingly, the 2nd respondent rejected their building proposals by Lr.No.231/A/30/1 to 4/31/3/8/2006 dated 02-11-2006 on two grounds viz. (1) the proposals submitted by the petitioners are not covered by any approved layout or sub-division of MCH and (2) to submit No Objection Certificate from Joint Collector, Hyderabad. It is also further stated that the rejection letter dated 02-11-2006 issued by the 2nd respondent is totally illegal and not based on valid grounds. As already stated the entire area of Sri Krishna Nagar is a well developed area which do not require any approval of layout. Since the entire area itself was an unauthorized colony existing right from 1977-78 and subsequently considering all these aspects, the unauthorized constructions were regularized and the land was also regularized and allotted to individual occupants. Therefore, the question of submission of copy of layout or sub-division to this area does not arise. The 1st respondent itself instructed the 2nd respondent as early as in 1997 vide proceedings dated 27-06-1997 to regularize the unauthorized constructions by collecting individual betterment charges etc. The unauthorized constructions of individual parties were regularized and the entire area was well developed by providing all amenities like roads and drainage etc. It is also further stated that the purpose of insisting approval of layout and sub-division of a vast land is to provide access from and to the small plotted land to the main road and developed the said roads by duly black topping etc, for the benefit and convenience of the residents. In the present case the entire area is already developed and is being maintained by the 1st respondent. At this stage insisting of approval of layout/sub division for approval of building permission does not arise and the same is irrational and unsustainable. It is also not out of place to mention that the Standing Committee of MCH in its meeting dated 23-06-2001 passed resolution

No.20 permitting to collect 5% open space contribution charges as per registration value only on grant of building permission in unauthorized layouts, unauthorized sub divisions and unauthorized colonies developed in private lands without layout approval. Therefore, in the light of these instructions of the 1st respondent, it is crystal clear that this objection for rejecting the building application is totally untenable, unsustainable and non-application of mind. It is also further stated that so far as the 2nd objection of rejection of the building proposals that the petitioners must submit the No Objection Certificate from the Joint Collector, Hyderabad, is concerned, the same is totally untenable and baseless. As per the provisions of the HMC Act 1955, the Commissioner has to look into the documents of title to satisfy himself regarding the prima facie title of the party over the property, but he cannot insist the party to get No Objection Certificate from the Joint Collector or any Revenue Authorities. Such requirements do not find anywhere in the provisions of HMC Act, 1955 and conferring such powers on the external statutory authority defeats the scheme of the Act itself. It is also stated that time and again this Court is declaring the action of the respondents in insisting for production of No Objection Certificate from the Revenue authorities as illegal and arbitrary. Therefore, the second objection of the 2nd respondent for rejection of the building proposals is untenable, unsustainable and does not stand for the judicial scrutiny. Several other factual details also had been narrated.

5. Counter affidavits filed in both the Writ Petitions are in similar lines and it was stated that the petitioners had submitted their building proposals praying for permission for construction of Ground plus two upper floors and after due examination of the said proposals and the same have been rejected vide a letter dated 03-11-2006 on two

grounds (1) the proposals submitted are not covered by any approved layout or sub-division of MCH and (2) to submit No Objection Certificate from the Joint Collector, Hyderabad. It is also stated that entire Krishna Nagar Colony has been declared as surplus land by the Urban Land Ceiling Authority under Urban Land Ceiling Act. The respondent Corporation had regularized the constructions under G.O.Ms.No.243 M.A. dated 22-05-1996 those who had constructed unauthorizedly by collecting the requisite fees as per the Government instructions. The houses constructed by the petitioners also were regularized as per G.O.Ms.No.243 M.A. dated 22-05-1996. It is also stated that the petitioners have to prove the prima facie title of their properties. Hence the respondent Corporation asked the petitioners to produce No Objection Certificate issued by the Joint Collector as per their entries for obtaining the construction permissions. The respondent Corporation had admitted the proposals with an intention to examine the proposals basing on the strength of the sanctioned plans obtained under the existing Regularization Scheme under G.O.Ms.No.243, MA, but after due scrutiny, the proposals had been rejected and intimated to the petitioners. The respondent Corporation is duty bound to act as per the provisions of the HMC Act and should also follow the instructions and guidelines of the respective competent authorities. It is also stated that the development of the civic amenities cannot be taken into consideration unless it is certified by the competent authority. It is further stated that for the prime location and well developed localities, the respondent Corporation is insisting on requirements like No Objection Certificate from the Collector, No Objection Certificate from the Special Officer, ULC and approved layout copies. It is also stated that in case of unapproved localities, the MCH is collecting 5% open space contribution charges duly insisting the No Objection Certificate, which is mandatory in case there is no previous sanctioned plan but in the

instant cases where the petitioners have filed proposals in the locality, which had already been declared as a surplus land of the Government, and the existing structures had been covered by regularized permission under Regularization scheme, which cannot be taken into consideration for according a building permission.

6. In the light of the stand taken in the counter affidavits, this Court is of the considered opinion that the Writ Petitions be disposed of with the following directions:-

As far as the insisting of the No Objection Certificate is concerned, the same cannot be insisted upon while considering the building applications of the writ petitioners. However, in the light of the specific stand taken that the MCH is collecting 5% open space contribution charges, it is needless to say that the petitioners are bound to pay such amounts which are payable to the Corporation in this regard and on such payments being made, the respondents are bound to consider the applications of the petitioners in accordance with law without insisting on the production of No Objection Certificate. It is needless to say that the respondents to dispose of the applications of the petitioners at an early date on complying with the directions referred to supra.

7. With the above directions, the Writ Petitions are disposed of. No costs.

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23.11.2006

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